

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

STATE OF OKLAHOMA, et al.)	
)	
Plaintiffs,)	
)	
vs.)	05-CV-0329 TCK-SAJ
)	
TYSON FOODS, INC., et al.,)	
)	
Defendants.)	

**TYSON FOODS, INC.'S SECOND AMENDED RESPONSE TO PLAINTIFFS'
FIRST SET OF INTERROGATORIES**

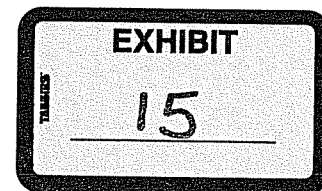
Pursuant to the Court's Order dated December 7, 2007 (Dkt. No. 1409), Defendant TYSON FOODS, INC., (hereinafter referred to as "Defendant" or "Tyson Foods"), submits its Second Amended Response to subsection (d) of Plaintiffs' Interrogatory No. 1. This Second Amended Response supplements all prior responses to subsection (d) of Plaintiffs' Interrogatory No. 1.

INTERROGATORIES

INTERROGATORY NO. 1: For each of your poultry growing operations in the IRW since 1952, please provide the following information:

- a. name and physical location of the operation;
- b. dates of operation;
- c. type of operation (breeder, broiler, layer, etc.);
- d. number of birds (aggregated annually) at each location; and,
- e. name of the owner and operator.

RESPONSE TO INTERROGATORY NO. 1(d): Tyson Foods objects to Interrogatory



No. 1 as it is overly broad in scope and time and, therefore, overly burdensome. Tyson Foods objects to the Plaintiffs' definition of "Defendant" as it is overly broad and includes within its scope "Contract Growers." Tyson Foods submits this answer and response for itself and not for any other person or entity. Subject to and without waiving these objections, Tyson Foods responds to Interrogatory No. 1(d) as follows.

Tyson Foods states that it has not contracted with any poultry growing operation in the IRW since 2000. This response provides information relating to poultry growing operations under contract with Tyson Foods' wholly-owned subsidiary Tyson Breeders, Inc. between 2000 and 2007. Tyson Foods does not possess information sufficient to answer Interrogatory No. 1(d). Neither Tyson Foods nor Tyson Breeders has historically identified contract poultry growing operations by watershed. Tyson Foods and Tyson Breeders do not in the regular course of business track or report bird production by watershed, nor do Tyson Foods and Tyson Breeders calculate or record bird production on an aggregated annual basis as part of their regular business practices. Accordingly, Tyson Foods does not know the total number of birds raised on farms under contract with its subsidiary Tyson Breeders in the IRW on an annual basis.

In order to comply with this Court's Order dated December 7, 2007 (Dkt. No. 1409), Tyson Foods has estimated the total number of birds raised each year from 2000 through 2007 on poultry growing operations under contract with Tyson Breeders in the IRW. The following steps, assumptions, and calculations were required to arrive at this estimate. First, Tyson Foods identified all poultry growing operations under contract with Tyson Breeders between January 2000 and December 2007 believed to be or to have been located in the IRW. Second, Tyson Foods retrieved from its Grower Information System the total reported number of birds placed at each identified pullet operation and the total number of birds sold from each identified hen

operation during each year from 2000 through 2007. Third, the following calculations were performed.

With respect to pullets and males, because chick suppliers provide 2% more birds to Tyson Breeders than are actually ordered and recorded as the number of chicks placed in order to account for sex slip errors, it is necessary to adjust the recorded number of chicks placed. To determine an accurate number of chicks placed ("adjusted number of chicks placed"), the recorded number of chicks contained in flocks placed on pullet operations under contract with Tyson Breeders in the IRW was increased by 2%. To account for flock mortality, the seven-year average mortality rate for capitalized flocks (age 25 weeks) of males and pullets was applied to reduce by twenty weeks of mortality the adjusted number of chicks placed in each flock on pullet operations under contract with Tyson Breeders in the IRW. The resulting number is the number of birds moved from the pullet operation to a hen operation at twenty weeks. The adjusted number of chicks placed and the calculated number of birds moved from the pullet operation at twenty weeks were averaged to determine the number of birds located on pullet operations under contract with Tyson Breeders in the IRW on a per flock basis. The average numbers of birds for each flock were aggregated on an annual basis to provide the number of pullets and males located on pullet operations under contract with Tyson Breeders within the IRW annually.

With respect to hens and males, the recorded number of birds sold per flock from hen operations under contract with Tyson Breeders in the IRW was increased by five weeks of mortality, using the seven-year average mortality rate for capitalized flocks (age 25 weeks), to arrive at the number of birds actually placed. The calculated number of birds placed was then averaged with the number of birds sold per flock to arrive at an average number of hens and males located on the hen operation under contract with Tyson Breeders with respect to a

particular flock. These averages were then aggregated on an annual basis to provide a total number of hens and males located on poultry growing operations under contract with Tyson Breeders annually.

Because birds are moved from pullet farms under contract with Tyson Breeders to hen farms under contract with Tyson Breeders, it is necessary to adjust the number of hens placed on poultry growing operations under contract with Tyson Breeders to eliminate the possibility of counting the same bird twice. It would be overly burdensome to actually track the movement of all Tyson pullets located in the IRW over the past seven years from pullet operations to hen operations. To do so would require manual review of each flock transfer register generated with respect to pullet growing operations located in the IRW during the relevant time period. Flock transfer registers are generated on a weekly basis, and the number of reports to be reviewed would be extremely large. Additionally, flock transfer registers do not exist for certain calendar years within the relevant time period, and such tracking of bird movement is impossible for those years. Therefore, a reasonable estimated reduction, based upon the percentage of pullet farms under contract with Tyson Breeders located in the IRW as compared to the total number of pullet farms under contract with Tyson Breeders was made to the total number of hens as calculated through the method described above.

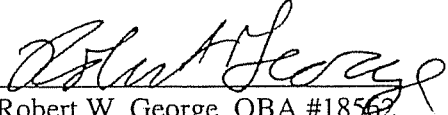
Subject to the foregoing qualifications and without waiving its objection, Tyson Foods provides the following estimate of the aggregated total number of pullets and hens located annually on poultry growing operations under contract with Tyson Breeders in the IRW.

<u>Year</u>	<u>Total Number of Birds</u>	<u>Year</u>	<u>Total Number of Birds</u>
2000	1,084,943	2004	1,134,136
2001	1,013,710	2005	858,471
2002	1,196,722	2006	384,055
2003	1,138,404	2007	387,789

The above figures are estimates only. The reliability and error rate in these estimates is unknown at this time. Tyson Foods reserves the right to challenge these estimates as unreliable if presented in court and further reserves the right to revise or supplement these estimates if additional information is obtained or a more reliable estimation methodology is identified.

Respectfully Submitted,

KUTAK ROCK LLP

By 

Robert W. George, OBA #18562

Michael R. Bond, *appearing
pro hac vice*

Erin Thompson, *appearing pro hac vice*

The Three Sisters Building

214 West Dickson Street

Fayetteville, Arkansas 72701-5221

(479) 973-4200 Telephone

(479) 973-0007 Facsimile

Robert.george@kutakrock.com

-and-

Stephen Jantzen, OBA #16247

Patrick M. Ryan, OBA # 7864

RYAN, WHALEY & COLDIRON

900 Robinson Renaissance

119 North Robinson, Suite 900

Oklahoma City, OK 73102

(405) 239-6040 Telephone

(405) 239-6766 Facsimile

-and-

Thomas C. Green, *appearing pro hac vice*

Mark D. Hopson, *appearing pro hac vice*

Timothy K. Webster, *appearing pro hac vice*

Jay T. Jorgensen, *appearing pro hac vice*

SIDLEY AUSTIN BROWN &

WOOD LLP

1501 K Street, N.W.

Washington, D.C. 20005-1401

(202) 736-8000 Telephone

(202) 736-8711 Facsimile

Attorneys for Tyson Foods, Inc.

CERTIFICATE OF SERVICE

I certify that on the 7th day of January 2008, I electronically transmitted the foregoing documents to following:

W. A. Drew Edmondson, Attorney General
Kelly Hunter Burch, Assistant Attorney General
J. Trevor Hammons, Assistant Attorney General
Robert D. Singletary, Assistant Attorney General

drew_edmondson@oag.state.ok.us
kelly_burch@oag.state.ok.us
trevor_hammons@oag.state.ok.us
robert_singletary@oag.state.ok

Douglas Allen Wilson
Melvin David Riggs
Richard T. Garren
Sharon K. Weaver
RIGGS ABNEY NEAL TURPEN ORBISON & LEWIS

doug_wilson@riggsabney.com,
driggs@riggsabney.com
rgarren@riggsabney.com
sweaver@riggsabney.com

Robert Allen Nance
Dorothy Sharon Gentry
RIGGS ABNEY

rnance@riggsabney.com
sgentry@riggsabney.com

J. Randall Miller
David P. Page
Louis W. Bullock
MILLER KEFFER & BULLOCK

rmiller@mkblaw.net
dpage@mkblaw.net
lbullock@mkblaw.net

Elizabeth C. Ward
Frederick C. Baker
William H. Narwold
MOTLEY RICE
COUNSEL FOR PLAINTIFFS

lward@motleyrice.com
fbaker@motleyrice.com
bnarwold@motleyrice.com

A. Scott McDaniel
Nicole Longwell
Philip D. Hixon
Chris Paul
JOYCE, PAUL & MCDANIEL PC

smcdaniel@jpm-law.com
nlongwell@jpm-law
phixon@jpm-law.com
cpaul@jpm-law.com

Sherry P. Bartley
MITCHELL, WILLIAMS, SELIG, GATES & WOODYARD PLLC
COUNSEL FOR PETERSON FARMS, INC.

sbartley@mwsgw.com

R. Thomas Lay
KERR, IRVINE, RHODES & ABLES

rtl@kiralaw.com

Thomas J. Grever
LATHROP & GAGE, L.C.
Jennifer S. Griffin
LATHROP & GAGE, L.C.
COUNSEL FOR WILLOW BROOK FOODS, INC.

tgrever@lathropgage.com
jgriffin@lathropgage.com

Robert P. Redemann
Lawrence W. Zeringue
David C. Senger
PERRINE, MCGIVERN, REDEMANN, REID, BERRY & TAYLOR, PLLC

rredemann@pmrlaw.net
lzingue@pmrlaw.net
dsenger@pmrlaw.net

Robert E. Sanders
E. Stephen Williams
YOUNG WILLIAMS P.A.
COUNSEL FOR CAL-MAINE FOODS, INC. AND CAL-MAINE FARMS, INC.

rsanders@youngwilliams.com
steve.williams@youngwilliams.com

George W. Owens
Randall E. Rose
THE OWENS LAW FIRM, P.C.

gwo@owenslawfirm.com
rer@owenslawfirm.com

James M. Graves
Gary V. Weeks
BASSETT LAW FIRM
COUNSEL FOR GEORGE'S INC. AND GEORGE'S FARMS, INC.

jgraves@bassettlawfirm.com

John R. Elrod
Vicki Bronson
CONNER & WINTERS, P.C.

jelrod@cwlaw.com
vbronson@cwlaw.com

Bruce W. Freeman
D. Richard Funk
CONNER & WINTERS, LLLP
COUNSEL FOR SIMMONS FOODS, INC.

bfreeman@cwlaw.com

John H. Tucker
Colin H. Tucker
Theresa Noble Hill
RHODES, HIERONYMUS, JONES, TUCKER & GABLE

jtuckercourts@rhodesokla.com
chtucker@rhodesokla.com
thillcourts@rhodesokla.com

Terry W. West
THE WEST LAW FIRM

terry@thewesetlawfirm.com

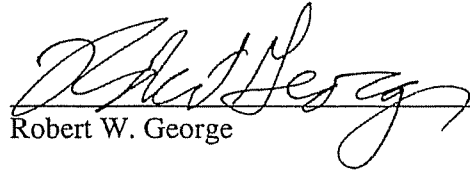
Delmar R. Ehrich
Bruce Jones
Krisann Kleibacker Lee
Dara D. Mann
FAEGRE & BENSON LLP

dehrich@faegre.com
bjones@faegre.com
kklee@baegre.com
dmann@faegre.com

COUNSEL FOR CARGILL, INC. AND CARGILL TURKEY PRODUCTION, LLC

I also hereby certify that I served the foregoing documents by United States Postal Service, proper postage paid, on the following:

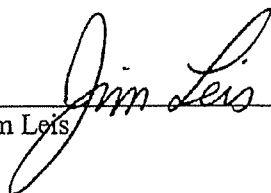
C. Miles Tolbert
Secretary of the Environment
State of Oklahoma
3800 North Classen
Oklahoma City, OK 73118
COUNSEL FOR PLAINTIFFS


Robert W. George

VERIFICATION

STATE OF ARKANSAS }
 }§§
COUNTY OF WASHINGTON }

I, Jim Leis, being duly sworn on oath, state that I have read Tyson Foods, Inc.'s Second Amended Response to Plaintiffs' First Set of Interrogatories and that the facts and matters contained therein are true and correct to the best of my knowledge, information, and belief.



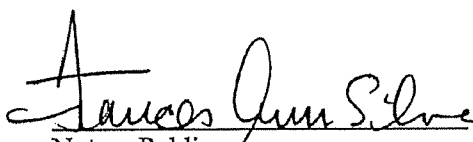
Jim Leis

ACKNOWLEDGEMENT

STATE OF ARKANSAS }
 }§§
COUNTY OF WASHINGTON }

On this date, Jim Leis did appear before me, the undersigned Notary Public and executed the foregoing document of his own free will and volition, and for the purposes stated therein.

Subscribed and sworn before me, the undersigned Notary Public, within and for the above County and State, this the 7th day of January, 2008.



Notary Public

My commission expires:

6/3/2013

